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Bail

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

V.

15 CR 867 (RMB)

REZA ZARRAB,

Defendant.

New York, N.Y.
June 2, 2016
1:00 p.m.

Before:

HON. RICHARD M. BERMAN

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the
Southern District of New York

MICHAEL LOCKART

SIDHARDHA KAMARAJU

Assistant United States Attorneys

BRAFMAN & ASSOCIATES P.C.

Attorneys for Defendant

BENJAMIN BRAFMAN

MARC AGNIFILO

JOSHUA KIRSCHNER

ALSO PRESENT: Scott Geissler and Jennifer McReynolds, FBI

Ecegul Elterman, Turkish language interpreter

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1 THE COURT: Good afternoon. So, I have a few remarks
2 at the outset. And my plan is to then defer to counsel, if
3 they wish to be heard, in support of the defense motion and in
4 opposition by the government.

5 You think you will want to be heard, Mr. Brafman?

6 MR. BRAFMAN: Yes, your Honor.

7 THE COURT: And counsel for the government as well?

8 MR. LOCKARD: Yes, your Honor.

9 THE COURT: So, we should note that there is a Turkish
10 language interpreter and who is interpreting and sitting next
11 to Mr. Zarrab. Is that correct, Mr. Brafman?

12 MR. BRAFMAN: Yes, your Honor.

13 THE COURT: Is that simultaneous or intermittent?

14 THE INTERPRETER: Simultaneous while the attorneys are
15 speaking and your Honor speaking, otherwise if you have
16 questions, it is an allocution, it has to be consecutive.

17 THE COURT: Okay. Let me just make a few remarks at
18 the beginning and they are as follows:

19 First, I want to say preliminarily and very
20 emphatically that we are not -- underscore not -- resolving or
21 even considering the issue of Mr. Zarrab's guilt or innocence
22 in this proceeding today. Mr. Zarrab is presumed to be
23 innocent under our legal system, and that presumption carries
24 right up until the time, if it comes, that he may be determined
25 to be guilty or not following a trial. The presumption of

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1 innocence is a very important concept in our judicial system.

2 So today we are only talking about bail, including the
3 proposed conditions of bail as opposed to remand pending trial.
4 The relevant statute is 18, United States Code, Section
5 3142(b), and under that statute, the Court shall order the
6 pretrial release of a person, unless the judicial officer
7 determines that such release will not reasonably assure the
8 appearance of the person as required, or will endanger the
9 safety of any person, any other person, or the community.

10 Under 18, United States Code, Section 3142(g), the
11 Court considers four factors to determine if there are
12 conditions of release that will reasonably assure the
13 appearance of the person and the safety of the community. And
14 I just want to take a minute and read those four factors to you
15 so everybody is on the same page.

16 The first is the nature and the circumstances of the
17 offense or crime charged, including whether the offense is a
18 crime of violence or involves a narcotic drug.

19 Number two is the weight of the evidence against the
20 person.

21 Number three is the history and characteristics of the
22 person, including (A) his character, physical and mental
23 condition, family ties, employment, financial resources, length
24 of residence in the community, community ties, past conduct,
25 history relating to drug or alcohol abuse, criminal history,

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1 and record concerning appearance at court proceedings.

2 And (B) this is still under factor number three, (B)
3 whether at the time of the current offense or arrest, he was on
4 probation, on parole, or on other release pending trial,
5 sentencing, appeal, or completion of sentence for an offense
6 under federal, state or local law.

7 And then the fourth bail remand criteria or factor is
8 the nature and the seriousness of the danger to any person or
9 the community that would be posed by the person's release.

10 As I just noted, by way of clarification, one of the
11 factors I just mentioned, one of the four factors, is called
12 weight of evidence. And here, again, I want to caution that
13 that factor, and the others that I mentioned, are going to be
14 analyzed at this time only in connection with the question of
15 bail or remand. Not with regard to guilt or innocence.

16 The Court has received a very professional and
17 extensive set of legal papers and submissions from the defense,
18 who are proposing bail conditions in an effort to demonstrate
19 that Mr. Zarrab will make all his court appearances, in other
20 words, to guarantee that he is not a flight risk. And that
21 proposal, that package, that bail package, includes the
22 following conditions:

23 One is a \$50 million personal recognizance bond
24 secured by \$10 million in cash; two is travel restricted to the
25 Southern District of New York; three is surrender of all travel

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1 documents; four is strict pretrial supervision; and fifth is
2 home detention with GPS monitoring at Mr. Zarrab's proposed
3 residence in Manhattan; and lastly, private armed security
4 guards who will monitor and guard Mr. Zarrab 24/7, in other
5 words, around the clock, in order to ensure that he makes all
6 his court appearances and that he is not a flight risk.

7 The Court has received a similarly professional and
8 extensive set of papers and submissions from the government who
9 oppose bail for Mr. Zarrab. The government is opposed to the
10 private security guard and home confinement arrangement offered
11 by the defense in this case. The government argues that a
12 private security firm "simply cannot replicate the controlled
13 environment of a federal correctional facility." And goes on
14 to argue that there are no bail conditions which can be imposed
15 here in this case, which will ensure that Mr. Zarrab, who is a
16 Turkish and Iranian national, is not a risk of flight.

17 So just so you are aware, and this is by way of heads
18 up, I'm going to hear, as I said at the outset, from counsel
19 orally today. I am unlikely to decide the issue here today
20 with you all present, and will more likely decide it over the
21 next week or so, upon further review of the papers.

22 A few more things and then I'm going to turn to
23 counsel. The first is that on several occasions, journalists
24 have called the Court's office or chambers and spoken to one or
25 another of my law clerks seeking my comment on some aspect of

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1 this case. Such calls are unwelcome and improper in our
2 system. The Court may not give interviews while a case is
3 pending. The Court's position is only what is stated on the
4 record when all of the parties and their counsel are present
5 here in court. Consequently, news articles which appear based
6 on information obtained out of court may very well be
7 inaccurate and incorrect. I have not given journalists any
8 interviews or comments in response to such calls, and I will
9 not do so going forward.

10 Second, the bail issue that we are considering today,
11 however it is decided, the best way that I know of to resolve
12 the issues presented in this case is to conduct a speedy and
13 public trial by jury. And to that end, the Court, that is to
14 say I, will make myself available to conduct the trial as soon
15 as counsel for both sides are ready. I would like counsel to
16 meet and confer following today's conference, and to select two
17 or three mutually agreeable trial dates, and ask them to send
18 me a letter indicating those dates if they can on or before
19 June 7, if that is possible. And we can fix an actual trial
20 date at the conference which is currently scheduled for
21 June 16, 2016, at 11 a.m.

22 So with that, I think I'll turn to Mr. Brafman who has
23 submitted the bail package.

24 MR. BRAFMAN: Yes, and your Honor, thank you.

25 Your Honor, to be candid, sir, I appreciate as always

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1 that the Court has taken a lot of unnecessary argument out of
2 the picture by some of the preliminary comments that your Honor
3 has made. So, I do not intend to try the case at this bail
4 hearing, and I would hope that since I decide not to try it,
5 that the government will likewise decide not to try it.

6 We may be commenting briefly on certain of the
7 statements made by the government, but clearly, I agree with
8 you, sir, that some of the complex issues in this case not only
9 would require a trial to be resolved, but may even require
10 experts on both sides, clearly, with respect to the sanctions
11 part.

12 THE COURT: I appreciate that and I will certainly
13 give you leeway if that's appropriate in making your comments.

14 MR. BRAFMAN: Thank you.

15 Judge, I must tell you, having appeared in this
16 courtroom and probably every other courtroom in this building
17 for the last 37 years, I'm somewhat awed by the responsibility
18 today, because I recognize that depending on my ability to
19 properly focus your Honor's attention on certain key issues,
20 may well impact on the quality of life that Mr. Zarbab will be
21 able to enjoy in the many months ahead, to the extent that you
22 decide whether he is remanded or is released on bail subject to
23 the conditions we propose.

24 I also respectfully note that conceptually trying to
25 prepare a case of this complexity while the defendant is

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1 remanded is almost impossible to conceptualize, and would
2 welcome questions if your Honor gets to that point at some
3 point. But I don't expect that you will grant bail simply for
4 that reason.

5 I expect that, and hope that you, sir, will grant bail
6 because he's legally entitled to it, and that the government
7 has a dual burden, as the Court in *Sabhnani* makes very clear
8 and as your Honor well knows better than anyone else in this
9 courtroom.

10 And I respectfully note that we can take danger to the
11 community out of the equation, because the government does not
12 argue that he poses a danger to the community, and none of the
13 crimes Mr. Zarrab is charged with are crimes of violence.

14 I will also respectfully note that there are two
15 burdens they must first meet under the law and under the cases
16 that your Honor is familiar with. One is that they first must
17 prove that the defendant represents a risk of flight, and
18 perhaps because of his lack of ties to the community, they make
19 that argument.

20 And your Honor, it is somewhat disingenuous to pluck
21 someone from a foreign country whose only contact to the United
22 States was coming here to go to Disneyland, and whose crime
23 involved passing through a Federal Reserve bank, and then
24 saying you shouldn't get bail because you have no ties to the
25 community. And it is impossible for someone under those

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1 circumstances to have ties to the community.

2 I have a great respect for this Court, which is why we
3 didn't propose a bail package without any sharp teeth in it.
4 We proposed what I think is a very important sets of conditions
5 that take the risk of flight out of the consideration.

6 And then even if they meet the first burden of
7 suggesting that the defendant is a risk of flight, the Court
8 and all of the judges in this building and in the Second
9 Circuit who have interpreted the law, said they next must meet
10 a dual burden, and the second burden is they must prove by a
11 preponderance of the evidence that there are no conditions that
12 will ensure that the defendant will come to court when he is
13 required.

14 And I submit with great respect that they have failed
15 miserably in that part of the equation. So that even if they
16 have suggested that he poses a risk of flight, we respectfully
17 submit that the second burden which they must overcome under
18 the statute your Honor cited and under *Sabhnani*, they have
19 failed. Because if you impose the conditions we suggest, then
20 the defendant will be here, and he will be here whenever
21 required, and he will not be able to leave the jurisdiction.

22 I am going to try to move through this. I know you've
23 read everything we've submitted. I've been before you before,
24 so I know that. But I need to address certain things for a
25 couple of reasons, and I ask for your Honor's patience.

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1 First of all, as is obvious to everyone and as your
2 Honor well knows, this case is being followed. And fortunately
3 or unfortunately, I think the public record that we're making
4 now is digitally available to anyone instantly. And I think it
5 is important that some of the statements made about Mr. Zarrab
6 are taken and put in their proper context. So I want to start,
7 your Honor --

8 THE COURT: You should know, I have nothing else on
9 the calendar today. And so feel free to say what you want to
10 say and need to say, and the same is true for the government.

11 MR. BRAFMAN: Thank you, Judge. I think I want to
12 start with the government's suggestion that this defendant was
13 not honest with the pretrial services interview in Miami. And
14 I say to you, sir, that under the circumstances here, I think
15 that statement is somewhat offensive. And I think what you
16 only need to do is actually look at the first section of the
17 pretrial services report, where the author of the report says
18 "Although the interview was conducted in English, the defendant
19 is in need of a Turkish interpreter and none was provided."
20 This was conducted by a pretrial services person without an
21 interpreter.

22 Now, if you recall, sir, and I have the transcript if
23 we need to refer to it, I represented to your Honor and say so
24 as an officer of the court, who I hope the Court recognizes
25 that I when I say that, that I'm being honest, that I told your

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1 Honor that I can have some conversation with the defendant in
2 English. And nevertheless, at the arraignment before your
3 Honor, you provided an interpreter.

4 We don't even have to go to that, Judge, because what
5 I got, to be honest with you, your Honor, which I think
6 resolves the issue, is the transcript of this defendant in
7 Florida when he was arraigned in Florida where he waived his
8 detention hearing. And in Florida, it is the prosecutor who
9 indicates that there is a language problem between defendant
10 and his attorney, and therefore, they are adjourning the
11 detention hearing.

12 And at that point, your Honor, there is an interesting
13 question that I raise. The question that I raise is the
14 government has essentially spent almost 50 percent of its
15 initial submission suggesting that the defendant was less than
16 candid with pretrial during his interview in Florida. And I
17 think they did that, your Honor, because they wanted to back in
18 to the facts in the *Cilins* case which is quoted by them, where
19 Judge Pauley denied bail with armed guards, ostensibly in part
20 because it wasn't until the third detention hearing where the
21 defendant in that case disclosed that he had a million dollar
22 secret bank account, and Judge Pauley mentioned that fact that
23 he had been dishonest with pretrial.

24 But the charges in *Cilins*, where the defendant was
25 charged with obstruction of justice, with attempting to suborn

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1 perjury in this district, with attempting to tamper with
2 witnesses. And Judge Pauley, who I know we all respect and
3 know quite well, said candidly that the nature of the charges
4 and the fact that the defendant was dishonest, having been
5 given three chances, determined in Judge Pauley's opinion that
6 he couldn't be trusted.

7 Now, if we remove from this argument that which the
8 government has spent so much time on, that this man has
9 purposely tried to deceive pretrial services, it takes the wind
10 out of the biggest sail in the government's boat to keep this
11 defendant remanded. And it does so, your Honor, because they
12 relied on it extensively, again and again and again.

13 And to be candid with you, Judge, I kept shaking my
14 head in somewhat disbelief because if you look at -- and I have
15 a copy here of the transcript of March 21, 2016, in the
16 Southern District of Florida. Mr. Hayes who is the government,
17 Assistant United States Attorney James Hayes, alerts the Court
18 to the following: "Your Honor, we're requesting pretrial
19 detention hearing. I have been in conversations with counsel,
20 because she's just met her client recently, and there is a bit
21 of a language problem and he's not ready to go forward today,
22 obviously," and then they go on and they schedule it and she
23 waives the hearing.

24 So I say that for two reasons. First of all, there
25 was no point, this pretrial services interview, if there was no

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1 interpreter available, because the defendant was not going to
2 have a detention hearing. The pretrial services report is
3 basically done, as we all know in this district, to give the
4 Court some guidance as to what you know about this person, and
5 we hope that the report is thorough and that the report is
6 accurate.

7 Now, your Honor, yesterday, I'm grateful that the
8 government sent you what was marked as Exhibit A, which is a CD
9 which shows about a 15-minute interview of Mr. Zarrab after his
10 arrest in Florida. The interview, it's very brief, takes place
11 on a Saturday night, after 10 p.m. And they had the ability to
12 get a Turkish interpreter on a Saturday night after 10 p.m.,
13 and the Turkish interpreter is present in that room with
14 Mr. Zarrab throughout that interview. And by my count, your
15 Honor, there are at least 15 separate occasions when Mr. Zarrab
16 looks at the interpreter and asks the interpreter by his facial
17 expression to interpret, and has conversation with the
18 interpreter, and the interpreter responds and the interpreter
19 explains.

20 And what's interesting, Judge, is it is usually in
21 connection with something that deals with assets, that deals
22 with entities, words that are not common to someone who speaks
23 English conversationally. And in one particular exchange,
24 which we cite in the letter we sent to the Court yesterday,
25 where the agent who is trying to pressure Mr. Zarrab into

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1 cooperating, says to him "Your illicit activities in financing
2 Iranian entities in violation of U.S. law," and Mr. Zarrab
3 responds "I don't understand." And then the interpreter goes
4 on to explain. And when he tells him repeatedly how much time
5 he is going to be spending in prison, maybe using the term
6 "decades in prison" several times during the interview, to
7 frighten Mr. Zarrab, who appears bewildered during this
8 interview, because several times he even asks "Am I under
9 arrest?" And the interpreter on 15 occasions, and it may be
10 16, it may be 14, so don't hold me to it, but the interpreter's
11 off to the left. You can hear him. But you can see
12 Mr. Zarrab, he keeps looking at him, and almost every time he
13 looks at the interpreter for guidance, it is because of a
14 question that relates to the case, to the charges, to the issue
15 of sanctions.

16 And to suggest, as the government has, that this man
17 speaks English well enough so that you should decide his fate
18 based on a report by pretrial, where one of the things we don't
19 have are the questions that were posed to Mr. Zarrab by the
20 pretrial services officer. We have her notes.

21 What we have represented to your Honor, and what we
22 think is true, this was done in the 15-minute interview when
23 Mr. Zarrab was essentially in a cage speaking through a screen.
24 Pretrial services interview required the report before the
25 defendant was brought to the arraignment. The arraignment is

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1 on October 21, Judge. It is three days after his arrest. They
2 had 72 hours to round up an interpreter. And when they needed
3 an interpreter, they had one on a Saturday night at 10 o'clock
4 when they wanted him to cooperate. But for a pretrial services
5 interview, there isn't a defendant in any country, besides
6 maybe a career criminal, who can grasp the significance of a
7 pretrial services interview.

8 And there is no lie in the interview. There is no lie
9 in the interview. There is no intentional withholding of
10 information in the interview.

11 And the perfect irony in this case, which still has me
12 scratching my head, is we're the ones who came to the Court and
13 told the government and told you all about his assets, all
14 about his charity, all about his wealth, all about his
15 businesses. Before there was a claim that the pretrial
16 services interview was false. We did that. Before your Honor
17 had to even think about bail, the defendant authorized us to
18 tell the Court everything. Not because he lied to pretrial.
19 But because we wanted your Honor to understand that this was a
20 man of substance, with a family, with businesses, with
21 legitimacy, with employees, who was considered one of the top
22 taxpayers in Turkey during the period in question. Number 56
23 on the list that we provided to your Honor of all the people in
24 Turkey.

25 So the government latches on to the following: When

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1 asked his monthly income, she writes \$60,000. Now, was that a
2 salary from one of the many companies he ran, is that his total
3 salary? Because on the next page she says he told her he had
4 an \$8 million home and that it was paid in full. There is no
5 followup questions, where did you get \$8 million on a \$60,000 a
6 month salary. He has a million dollar business. There is no
7 followup, where do you get a million dollars on a \$60,000
8 salary.

9 And then she says the defendant possessed a Turkish
10 passport which he advised was seized by arresting officers.
11 That's true. He came into the United States on a Turkish
12 passport. And then she writes, and in the past 10 years the
13 defendant has traveled to London, Europe, China, Singapore,
14 Thailand and Dubai for vacation. How do we know what that
15 question was? And the government says, well, you also went to
16 other countries and he didn't list them all, because obviously
17 he didn't want pretrial services to know.

18 Judge, if the defendant had known that this report
19 would be used by the United States attorney's office to detain
20 him, he had a right to counsel at that hearing, she wasn't
21 there. He had the right to an interpreter as noted by the
22 pretrial services officer, they didn't provide him with an
23 interpreter.

24 And they take the position that because this is not a
25 complete document, therefore, he lied and therefore you should

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1 not release him on the conditions that are imposed because
2 under *Cilins* the Court used a lie to pretrial services as a
3 basis upon which to detain the defendants.

4 THE COURT: Is the point or the central point that if
5 you take out that allegation that he was not being forthright
6 with pretrial services, you remove the *Cilins* precedent of
7 Judge Pauley? Is that what you're arguing?

8 MR. BRAFMAN: It's that argument, yes. Because the
9 case -- I will tell you, sir, in a moment that every single
10 case that the government cited to your Honor is completely
11 distinguishable. We're in the Southern District. They are in
12 the Hula Bowl with some of the cases they cited, the facts are
13 so different.

14 But in the *Cilins* case, and we all have respect for
15 Judge Pauley, in that case he denied 24-hour armed guards. In
16 that case he made a finding that *Cilins* were not trustworthy.
17 They had three detention hearings before he first admitted to a
18 million dollar bank account.

19 *It is more than that, Judge, and I appreciate the*
20 *question. What the government has said is that forget Cilins*
21 *for a minute. They have said in half of their initial*
22 *submission and continuously in their sur-reply, they have said*
23 *that the defendant's failure to fully disclose his assets to*
24 *pretrial services is a reason why you can't trust him. Because*
25 *it shows that he is deceptive, it shows he is dishonest. How*

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1 can you trust someone who has been dishonest?

2 And what's interesting is Judge Rakoff in the *Dreier*
3 case, which is, you know, a decision in this district, approved
4 24-hour armed guards, and Dreier had a dual personality.
5 Dreier had a completely false identity that he had set up to
6 use to bilk people, and Judge Rakoff says, I got to give him
7 bail because the law says that if the conditions that are
8 proposed will ensure his appearance, the law requires me to
9 give him bail.

10 And he also addressed something else, which is sort of
11 the elephant in the room and perhaps in the country. He
12 addressed the issue of do we allow wealthy defendants to do
13 this when not wealthy defendants can't do it.

14 Your Honor has a history of family court; I was an
15 assistant district attorney. The inequities in the criminal
16 justice system on the state and federal level between people of
17 means and people of not means is not something that is
18 Mr. Zarbab's fault, and it is nothing we are going to remedy in
19 this case. It is sad, but it's true. Poor people don't get
20 the same quality sometimes of representation, maybe the same
21 quality of sentencing advocacy. It's sad, but true.

22 But that does not mean that you claim someone is very
23 rich and, therefore, he can use his wealth, and then say but
24 you can't use your wealth to create a prison. That's an
25 anomaly that Judge Rakoff dealt with in the *Dreier* case, Judge

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1 Broderick dealt with in the *Ng* case, and we'll get to the *Ng*
2 case in a minute, because I was struck by what the government
3 said. And I know the *Ng* case because I argued that bail
4 package, and I'll move onto that in a moment.

5 But what your Honor's question was, first of all, in
6 *Cilins*, the charges were reprehensible. Our client is charged
7 with what we believe to be an unprecedeted violation of the
8 Iran sanctions law applied to a non-U.S. citizen who has not
9 done anything on U.S. soil, has not come to the United States
10 to commit a crime, and the only connection to the United States
11 is that some of the bank transfers in dollars the government
12 alleged passed through a United States bank. Not the
13 defendant's bank account. A United States bank. One bank
14 cleared apparently through the Federal Reserve, but they don't
15 have any jurisdiction whatsoever.

16 In *Cilins*, you were dealing with someone who was
17 intending to corrupt this courthouse, corrupt this case,
18 corrupt his case, and Judge Pauley I think dealt with him
19 appropriately.

20 So when you take out the lack of an interpreter, and
21 then understand that the defendant was not being deceptive, and
22 it is unfair to think he is deceptive, it is more than getting
23 beyond *Cilins*. It gets me to where I hopefully want your Honor
24 to be, and that is that the defendant is not dishonest with the
25 Court, has not attempted to be deceptive with the Court. And

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1 if your Honor set bail conditions, he would comply with them.

2 Your Honor, I also note that, unlike *Cilins* where the
3 defendant's information was relied on by a Court and it turned
4 out to be false, we are the ones who came to you, sir, in our
5 bail application, and told you where all of his assets are and
6 all of the different businesses that he has.

7 And I just want you for a moment, sir, and forgive me,
8 I'm not trying to be dramatic, he comes to the United States
9 not to commit a crime, he comes to the United States to take a
10 five-year-old to Disneyland. At the airport, he declares
11 \$100,000 in cash before he is under arrest, not because he
12 thinks he is going to be arrested, because if he thought he was
13 going to be arrested, why come to the United States? He
14 declared it because it was the legal thing to do. And the
15 government ignores that. The government suggests that if he
16 comes to the United States with \$100,000, that's a bad thing.

17 Well, to be honest with you, Judge, it's very hard to
18 come to the United States from a foreign country where the
19 local currency may or may not be fluctuating, may or may not be
20 acceptable here. But he declares it. He does what the law
21 requires, and Customs has no quarrel with it.

22 He's then arrested, but then I want to ask your Honor
23 just for a moment to consider the following. You're going to
24 Disneyland, and suddenly you're not. Suddenly you are in
25 handcuffs and suddenly you are in a maximum security jail, and

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1 on a Saturday night you are confronted by two FBI agents and an
2 interpreter and you are told you are going to be spending the
3 rest of your life in jail, and you keep saying "I don't
4 understand. I don't know what I did wrong." And the only
5 statement which he does make in English "I did not violate the
6 law."

7 So there is nothing in that tape which the government
8 could use. If we tried to offer it at trial to show
9 consciousness of innocence, they would say it is not admissible
10 because it's not an admission.

11 The purpose of that tape is to show the difficulty of
12 the defendant with the English language. It is clear as a bell
13 on that tape, so I am glad they taped it. It is also clear as
14 a bell when they want to get an interpreter to help, they can
15 get a interpreter even on a Saturday night.

16 Your Honor, I want to talk for a moment, what's
17 interesting in this case is that there are parts of this
18 indictment that trouble me. And I don't mean "trouble me"
19 because I am going to have trouble defending them. They
20 trouble me because, your Honor, this just kind of stuff doesn't
21 happen in the cases that I'm generally in.

22 The indictment, which I know your Honor has, has two
23 e-mails that the government cites to as evidence that the
24 defendant is a bad guy. There is no other reason to put that
25 e-mail into the indictment. One of the e-mails which is on

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1 page 11 -- starts at the bottom of page 10, goes on to page 11
2 of the indictment, it is an e-mail from someone to Mr. Zarrab,
3 which suggests that he should support the supreme leader and he
4 should violate the sanctions, and it is almost like too good to
5 be true for the government to have an e-mail like that, which
6 is obviously of interest to me, who is this.

7 But what the government doesn't say, what the
8 government actually does say, is that this e-mail was sent to
9 Mr. Zarrab and was supposed to be signed by him. It was
10 presented for his signature. And the government concedes in
11 the memo that he didn't sign it. He didn't sign it. It was
12 found in his e-mail box.

13 I want to suggest, and I don't mean to be facetious,
14 but if I was to send an e-mail to your Honor and say, Judge, I
15 think you should really vote for Bernie Sanders, and we found
16 it in your e-mail, that should not be used to suggest that
17 Judge Berman supports Bernie Sanders because you would have to
18 respond to the e-mail, and you didn't, or you would have to
19 sign for the e-mail so we at least know that you have it.

20 This e-mail was in Farsi. As we indicate in our
21 papers, the defendant does not read Farsi. He speaks Farsi.
22 He left Iran when he was one years old. He was not educated in
23 Iran. There is no proof anywhere that the defendant speaks
24 Farsi. To the contrary. There is evidence in the discovery
25 where he is telling people that he doesn't speak Farsi.

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1 So, this e-mail, which we submit would not get to a
2 jury, we would in the motion in limine under 403 seek to strike
3 this because all it does is inflame -- he cannot write Farsi.
4 So he can't respond to this. He can speak Farsi. But he
5 cannot respond to this. And he didn't respond to it.

6 What's even more troubling, because we're playing fast
7 and loose with translations, we have an e-mail that is signed,
8 that appears on page 10. And that e-mail is important, and
9 your Honor has a copy of the indictment. I would like to be
10 able to hand something up and also give a copy of this to the
11 government.

12 THE COURT: You're on page 10?

13 MR. BRAFMAN: Yes, your Honor. There is an e-mail on
14 page 10 which we have officially translated by a certified
15 interpreter. And I understand that the government will say,
16 well, how do we know this person knows how to interpret. I
17 represent to you that this is a certified interpreter who has
18 interpreted this e-mail. This e-mail was interpreted, again,
19 from Farsi into English, and the government's translation is so
20 off, is so different, than the official interpreter typed for
21 us, and gave to us, I ask to be able to hand up and give a copy
22 to the government. I've highlighted one particular section.
23 I'd ask your Honor if you could, sir, take a moment, please --

24 THE COURT: So, you want me to compare this to which
25 line on page 10? Starting on which line of page 10?

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1 MR. BRAFMAN: If you look at the highlight of the
2 indented portion, which is the e-mail, this e-mail is supposed
3 to refer to two transactions of \$9,225 and 35,000, according to
4 that page of the indictment when you read up. And then what
5 they say is signed by Najafzadeh, a co-defendant, concerning
6 the two payments through the Nafis Exchange Office which stated
7 in part, in Farsi, then you have in the indictment a English
8 translation.

9 And for the record, do you mind, sir, if I read it?

10 THE COURT: Not at all.

11 MR. BRAFMAN: This is the quote: "The above amounts
12 were blocked by OFAC, and despite repeated follow ups to
13 execute these transfers by providing all necessary documents,
14 unfortunately, the transfers have not been executed and
15 deposited in the beneficiary's account. Therefore, despite the
16 lack of communication with you regarding the covered topic, and
17 only with regard to your excellent achievements regarding
18 similar prior cases, it is requested regarding the passage of
19 more than two months and lack of any results from the follow up
20 of Nafis Exchange, please arrange with your guidance this case
21 can be closed."

22 Now, that is supposed to suggest that the defendant
23 had notice that these transactions were blocked by OFAC. What
24 is not in this translation, and that which is highlighted in
25 the typed translation where the certification is behind it, by

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1 a certified interpreter Beth Morgan, the highlighted section
2 says, I quote: "Thus, though the above-mentioned issue does
3 not concern you." That's not in the government's translation.
4 Nor is this a literal translation by the government, because
5 the literal translation, if you want me to read it, sir, reads
6 completely differently.

7 What I've learned in the short time I've been in this
8 case is that Farsi is like -- there are cultural disconnects
9 between who is interpreting and how they're interpreting. And
10 in some languages that happens. It happens in Mandarin, I
11 learned recently in the other case.

12 But what happened in this case is the government
13 relied on interpretations that were in our opinion inaccurate.

14 So when they say this is a slam dunk case, and the
15 evidence against the defendant is overwhelming, there are two
16 issues that they're going to have to deal with. First, the
17 e-mail from the supreme leader -- to the supreme leader or
18 about the supreme leader, that is perhaps the most prejudicial
19 document in the case. I suggest under 403 will never be
20 admitted into evidence. It will never be authenticated as
21 having been read by the defendant, and it will never be
22 authenticated as having been understood by the defendant, and
23 there is no theory of admissibility as to how that comes in.
24 Because if you are to send something to me, and I get it, you
25 could say well, maybe it shows you knowledge. Maybe it does,

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1 maybe it doesn't. But it doesn't mean that I adopt what you've
2 said. It doesn't mean that I share your concerns.

3 Now, maybe the government's going to suggest, well, it
4 shows the state of mind of the person who wrote the e-mail.
5 Good. That's not my client. It doesn't show the state of mind
6 of the person who got the e-mail, because we don't know that he
7 got it. They found it in his e-mail box. Right now my e-mail
8 is off because I'm in court and out of respect I turn it off.
9 There may be 50 on there that are junk. There may be 50 on
10 there that are people trying to solicit investment in some town
11 in Nigeria. It doesn't mean that I am agreeing with this
12 preposterous project.

13 So I suggest most respectfully, Judge, that this case,
14 which the government suggests is overwhelming, has issues that
15 criminal defense lawyers, to be candid with you, generally
16 don't have in a case.

17 We have conferred with sanctions experts throughout
18 the country, and we have not found one identical case charging
19 a non-U.S. citizen who is not importing or exporting goods into
20 the United States, who is not smuggling goods, who is not
21 working through his bank account in the United States, where
22 it's bank to bank, we have found nothing, no precedent
23 whatsoever.

24 The bank cases that the government cites, they're
25 against banks. Most of the banks either pled guilty or worked

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1 out deferred prosecution agreements, because the cost to the
2 bank of fighting it is the same as paying it, and banks can pay
3 it.

4 But the point is in those cases, the sanctions
5 violations were to a United States bank, owned by the bank or
6 sent by a United States, bank to a bank. That's not the case
7 here. We have found no case, and they have not found a single
8 case, Judge, in which a non-U.S. citizen from Turkey sending
9 something to a different country outside the United States, and
10 some of the dollar transactions by the bank end up passing
11 through the Federal Reserve for one reason or another, has
12 nothing to do with willfulness on the part of Mr. Zarrab.

13 And most incredibly, Judge, because this whole world
14 of sanctions, I must be honest to you, is new to me, although I
15 think I am a quick study, just last week, the undersecretary of
16 the Treasury, who used to be the head of OFAC, testified before
17 Congress. And when you read his testimony, one would think
18 that now that we have a treaty with Iran, the sanctions are
19 being eased. Yes, they are, and maybe by the time we have
20 motion practice in this case, there won't be any more
21 sanctions. It will be an interesting question to see if
22 someone who has committed a crime, allegedly, that is now no
23 longer a crime, what that person's status is for purposes of
24 guideline analysis variance or whether the case can go forward.

25 What is interesting about the Szubin testimony that we

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1 cite to your Honor is he goes back. He doesn't just go
2 forward. He goes back before the sanctions are eased, and he
3 says very clearly that these sanctions were never intended to
4 apply to a non-U.S. citizen. Because if you think about it for
5 a minute, if it is a non-U.S. citizen outside the United States
6 dealing with a bank outside the United States, and it is a
7 transfer to a bank outside the United States, we would be
8 controlling the entire world. We could be prosecuting people
9 in every country in the world, and that's not what we're
10 supposed to do.

11 Just like I am not going to ask the Court to become
12 involved in the political underground war in Turkey that the
13 government refers to over and over again without authenticating
14 the source or relying on press reports. I think that's
15 inappropriate and I'm not going to get into that, unless your
16 Honor asks me to get into it. I'm not going to get into the
17 allegations against Mr. Zarrab in Turkey, unless your Honor
18 wants me to go into it. Because under the law of comity, that
19 case has been dismissed, that case has been dismissed by the
20 prosecutor, that case has been dismissed by the Court, and
21 ultimately those charges were also dismissed by the Parliament
22 against the people who are alleged.

23 So there is no criminal record of Mr. Zarrab. And
24 what the government has tried to do, in my opinion, most
25 respectfully, and I have great respect for these two

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1 lawyers. This isn't personal. But what they have done in
2 their papers is they've tried to dirty up Mr. Zarrab as best
3 they could even if it means recklessness.

4 You want to know one of the things I found amusing?
5 They say he has a submersible. It is a submarine you rent for
6 a couple of days if you want to go underground to see the
7 ocean. It is not a submarine that you use for military
8 warfare.

9 The guns that they talk to you about, there was a
10 retired police officer who had a classic gun collection, they
11 were all permitted, and he wanted to try and interest
12 Mr. Zarrab in buying them.

13 You know, I once used this in a summation. If you
14 take a pizza with a lot of toppings, and you throw it against
15 the wall, the pizza falls down but the wall is dirty. That's
16 what's happened here, your Honor. They have taken a classic
17 white collar case that is eminently defensible, that is a case
18 of first impression, and they have essentially taken the
19 position that he is a bad guy, and therefore, you should keep
20 in jail and you should keep in jail for basically forever. Or
21 at least until there is a trial, which could be many, many
22 months. And I know your Honor wants us to meet and wants us to
23 confer with the government.

24 One thing that no one could say truthfully is that I
25 shy away from showing up when there is a trial date. I'll be

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1 here whatever date we pick or your Honor orders. But there is
2 a substantial difference in the length of time that will be
3 required to defend this case if the defendant is able to be out
4 at a lawyer's office, than if eight lawyers are trying to get
5 in a cubicle at the MCC with the lack of the computers that we
6 need. Because they're turning over the discovery by the
7 bushel, to their credit, but it's hundreds of thousands of
8 e-mails, many of them are not translated, many of them are in
9 foreign languages that we'll have to have translated.

10 Your Honor, I want to go back to the *Ng* case. Because
11 what's interesting to me, your Honor, is how when the
12 government needs to, they can sort of flip. Here's what I
13 mean. I argued the *Ng* case. I'm no longer counsel of record
14 in that case for reasons having nothing do with the case or
15 Mr. *Ng*, but I argued the bail motion before Magistrate Judge
16 Fox and I argued it before Judge Broderick when the government
17 went there.

18 In that case, the government fought to the death to
19 keep Mr. *Ng* detained. He was a billionaire, his wealth -- his
20 wealth dwarfs Mr. Zarrab's wealth. It -- billionaire. Private
21 planes. He was heading to a private plane when he was
22 arrested. And here, we have a defendant who came into the
23 United States with \$100,000, gave it, told Customs he had it.

24 In the *Ng* case, what the government hung their hat on
25 was he lied to Customs about suitcases full of cash that he had

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1 brought into the United States again and again and again, a
2 total of several million dollars' worth of United States
3 currency, and he was arrested for a 1001 violation, which was
4 later dismissed when they realized they got it wrong. But the
5 argument was that he lied about the purpose of the money.

6 And in the Ng case we had a foreign national with zero
7 ties to the United States, who, according to the government,
8 and I don't want this to be used in any way to prejudice
9 Mr. Ng, because I'm just telling you what the government said,
10 but in that case, the government charged a foreign national
11 with coming to the United States for the purpose of committing
12 a serious crime on New York soil in the Southern District of
13 New York, by attempting to bribe U.N. officials. Not a crime
14 in China. But a crime that was going to be committed here.
15 And they forced the issue. They first told Magistrate Fox it
16 was illegal for him to consider the bail package. That
17 language is actually in the record before Judge Fox. Because
18 if you look at the colloquy between Judge Broderick and the
19 assistant United States attorney in the bail hearing, when we
20 got before Judge Broderick, the first question he asks of
21 Mr. Richenthal is "Are you suggesting, is it the government's
22 position that if I consider approving the bail package that
23 Judge Fox approved, that I would be doing something that
24 violates the law?" And they backed off, obviously, because
25 half a dozen judges in this district and in other districts

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1 have approved that, and no one is going to suggest they
2 violated the law. They backed off that. They said, "No, we
3 just think it's something that is frowned upon, that should be
4 frowned upon," and they got stuck and mired in this position.

5 If you look at the very first couple of pages of the
6 transcript we submitted to your Honor, that's what they
7 basically said.

8 Let me get to the main, main component of the bail
9 package. Your Honor correctly noted the significant conditions
10 that we provide. And again, almost in an implicitly offensive
11 manner, in order to get around what they know to be compelling
12 precedent of other judges in this building who approved the
13 24-hour guard as a way to release the defendant from jail, but
14 nevertheless ensure his appearance, because your Honor's
15 direction from the court of appeals and from the law is to find
16 the least restrictive conditions of bail possible.

17 So in order to get around that, they use little words
18 in the submissions that I think they shouldn't use, to be quite
19 candid. They use words like "This is a facade." "These guards
20 are under the employ of the defendant." "These guards can't be
21 trusted."

22 I just want to put on the record, I was delighted when
23 your Honor asked us to unseal the Guidepost affidavit from
24 Joseph Jaffe who is present in the courtroom, and I think your
25 Honor was 100 percent correct. Let the public who will read

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1 about this, should your Honor grant bail, understand what we're
2 proposing. We're not proposing two old retired cops from the
3 beat who were just going to schlep into the apartment and say
4 watch this guy.

5 Guidepost is run by Bart Schwartz. Bart Schwartz was
6 the chief of the Criminal Division of the United States
7 Attorney's Office for the Southern District of New York. He
8 has impeccable credentials. He has been appointed by federal
9 judges throughout the country as a monitor, as someone who
10 should go in and do compliance, to do due diligence, and
11 Guidepost is his company.

12 And Joseph Jaffe, who is present in the courtroom,
13 gave you an affidavit with his background. He was the head of
14 official corruption for the United States Attorney's Office for
15 the Southern District of New York. He was a former district
16 attorney in upstate. He's been in law enforcement his whole
17 life. They personally vet these guards.

18 And in the *Ng* case, who has been on bail now for more
19 than six months, it works flawlessly. And just so the record
20 is clear and so that your Honor understands, I want to just
21 explain to you, sir, how it works.

22 The way it works is Guidepost first of all inspects
23 the apartment. They have already done that. I don't want you
24 to feel that we are presumptuous doing it, but time is of the
25 essence. If you do grant bail, I don't want to be inventing

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1 the wheel while he sits in jail longer than necessary. So
2 Guidepost has already inspected and approved the apartment.
3 What that means is they take away any security concerns, they
4 have outfitted the apartment with cameras, they have outfitted
5 the windows with censors. The apartment is on the 15th floor
6 of a building. The only thing we've redacted was the exact
7 address and the apartment number. Your Honor has it, but we
8 don't need all of these journalists camping outside that
9 building. It is not fair to the other tenants. Even if you
10 grant bail, we'd like him to have some modicum of privacy if
11 possible.

12 THE COURT: We'll get to that at the end, but I did
13 receive a letter from --

14 MR. BRAFMAN: I understand, Judge, and I'm not looking
15 for a fight with the New York Times or anyone else. But, we'll
16 cross that bridge when we come to it. It only matters if your
17 Honor rules in our favor. So we could defer the fight with
18 them if that hopefully happens.

19 What we've done is the apartment's been leased, the
20 apartment's been paid for, the apartment's been furnished. And
21 the way it works is Guidepost picks, not we, Guidepost picks
22 the people who work in that apartment. And these are the
23 rules. They all have to be either current or retired law
24 enforcement personnel. That means FBI, DEA, Customs or Postal
25 Inspectors or New York City Police. They have to have

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1 impeccable background checks. They vet these people because
2 their reputation is determined by those people. At least two
3 officers are in the apartment 24/7. Sometimes they work in
4 12-hour shifts, sometimes they work in eight-hour shifts. But
5 there are two people in that apartment with the defendant at
6 all times.

7 He goes no place unless the trip is approved by
8 pretrial services, and unless the trip meets the conditions of
9 bail, and the only conditions that we would ask for, if we get
10 to that point, is that he be permitted, if necessary, to travel
11 with Guidepost to counsel's office. He would be permitted
12 obviously to come to court as required, if there is a medical
13 emergency --

14 THE INTERPRETER: You're going too fast.

15 MR. BRAFMAN: I'll slow down.

16 THE COURT: Excuse me. Do you need a break?

17 THE INTERPRETER: It would be nice.

18 THE COURT: Why don't we take five minutes.

19 (Recess)

20 THE COURT: Please be seated everybody.

21 Two things, Mr. Brafman. I've been advised to advise
22 you to go slower. And second, I think we want to soon get to
23 the government.

24 MR. BRAFMAN: Yes, your Honor. I have been advised to
25 go slower as well, but your advice is much more important and I

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1 will. Also I'm coming to the end. Had we not taken the break
2 I think I needed another five or six minutes, but I hear you,
3 sir, loud and clear.

4 Your Honor, when we left I was just discussing for the
5 record who Guidepost is and what they do and how they staff it.

6 There are two people on the premises at all times. If
7 your Honor requires, they will be armed guards. If your Honor
8 requires, they will be permitted to use reasonable force if
9 necessary. We agreed to that in the *Ng* case where the
10 defendant actually signs a waiver of liability, to the extent
11 he tries to escape, which is just not going to happen, but if
12 he did, they could shoot him just like they are law enforcement
13 people, and they're not going to risk their professional career
14 nor their lives in allowing him to do anything wrong.

15 They supervise everyone who comes into the premises,
16 and those people are subject to search. And you are permitted
17 to have a list and they clear it, whether it's lawyers or
18 family or whoever it is. So it works perfectly.

19 If he has to be transported, Guidepost provides a
20 security vehicle and a driver, so now you have three people, a
21 driver and two armed security guards, who are transporting him
22 everywhere, whether it is for medical emergency, religious
23 service, anything approved by pretrial.

24 Pretrial needs to inspect the apartment. They can't
25 do that before they have an order from the Court granting bail,

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1 so they haven't been able to inspect the apartment. But we
2 wanted to get a head start so the apartment is available and
3 it's been outfitted with all of the security measures that
4 pretrial would normally require. They need to have a dedicated
5 landline for the electronic monitoring, all of that is
6 available. So pretrial, if your Honor permits, will be able to
7 inspect.

8 And we have other conditions as follows. I want to
9 get to the money part of the bail package. You know, if we
10 said 100 million, the government would say, well, he has 200
11 million, so what's 100 million. So we picked a number, your
12 Honor, that is meaningful to him, but hopefully also meaningful
13 to the Court. It is not every day that people in this
14 courthouse post \$10 million cash secured by a \$50 million bond.

15 And I want to tell you, sir, just a couple of things
16 about Mr. Zarrab that I think are important. He's 33 years
17 old. He has a five-year-old daughter. The government suggests
18 that he would want to be a fugitive for the rest of his life.
19 Assuming a normal lifespan, that would mean he would have to
20 live as a fugitive for 50 years. He would never subject his
21 family to that. And his wife, Judge, who is an internationally
22 recognized recording star and perhaps the highest paid
23 recording artist in Turkey, would be the wife of a fugitive.
24 And every time she tried to go to a foreign country, and we
25 have lists of her signed contracts where she's already going in

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1 months ahead, paid performances, it's just not something he is
2 going to do.

3 And finally, Judge, this case is defensible, I submit.
4 This case is unique. This case has issues which none of the
5 other cases in this building have. And whether they are cases
6 of first impression, we anticipate substantial motion practice
7 which will distill whether there is a bank fraud. The Supreme
8 Court is considering that issue today. Whether you need to
9 intend to defraud a bank. And there is a 9-3 split among the
10 circuits, and the Second Circuit is on our side of that fence.
11 And if the Supreme Court rules in our favor, there is no intent
12 to defraud the bank.

13 The bank didn't lose any money. Banks made money off
14 of these transactions. And certainly he didn't intend to
15 defraud the bank, because he had no idea that those
16 transactions were going to pass through a United States Federal
17 Reserve, because they were sent by non-U.S. banks to other
18 non-U.S. banks.

19 The cases they cite where people are smuggling plane
20 parts and nuclear warheads and all sorts of commercial
21 equipment, that's not this case. The statutes they cite have
22 never been applied to a non-U.S. citizen who is not providing
23 goods. And whether the sanctions remain or not, to suggest as
24 they have that this man is, A, definitely going to be
25 convicted, and definitely going to face decades in prison. The

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1 way the guidelines are applied in this case, your Honor may
2 have extraordinary discretion on what sentence to impose in the
3 event of a conviction. And if by then the sanctions are
4 completely gone, as Mr. Szubin suggested it might be, maybe
5 there is an appeal to reason with the U.S. attorney's office as
6 to why this case should not proceed.

7 And I want to close, Judge, by just talking briefly
8 about two of the cases the government cites and relies on to
9 show you how distinguishable they are. And I want to make
10 certain the record is clear, the bail statute requires that we
11 provide the Court with assurances, reasonable assurances that
12 he will be here. No one can guarantee, and the statute doesn't
13 require a guarantee, and the Court can't require a guarantee.
14 That's not the language. Reasonably assures that the defendant
15 will be here is the language. Because someone can die, someone
16 can, you know, disappear, all things can happen that are beyond
17 our expectations. So we're taking all of the reasonable
18 measures to provide the kind of conditions that will allow the
19 Court to feel comfortable that the defendant will reasonably
20 appear.

21 Your Honor, the government cites the *Banki* decision,
22 and the *Banki* decision was a case decided by Judge Keenan who
23 all of us I think have great respect for, indeed he was my
24 chief when I was in the district attorney's office.

25 But I have the order of Judge Keenan in the *Banki*

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1 case. And what the judge in that case cites in the order as a
2 principal reason for him not doing the 24-hour security guard
3 is when the defendant was arrested, he had false identification
4 cards which are available for people who wish to change or mask
5 their identity. These documents explain we can create custom
6 identification cards in any country. And Judge Keenan didn't
7 trust Banki for that reason. And he didn't rule out the use of
8 these guards. At the end of the case, he says "In this case,
9 I'm not going to allow it." "In this case." Because of what
10 this guy was charged with and what this guy had in his
11 possession at the time.

12 Your Honor, the *Sabhnani* case is an interesting case.
13 Because the *Sabhnani* case which is the case I think all of us
14 look to for guidance, is a case that not only had risk of
15 flight, but there was violence. They considered these people
16 dangerous to the community. These people were employing people
17 and they were keeping them kidnapped in their house and they
18 were beating them and hurting them. And they were considered
19 risks of flight and dangers to the community. And Judge Platt
20 originally denied the bail conditions, and the Second Circuit
21 said you got to do this. The armed guards takes out the
22 concern that they're going to run, and we're not concerned that
23 they're going to hurt anyone if the armed guards are there, so
24 we're going to propose armed guards.

25 Now, I understand those people were naturalized

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1 citizens and they had ties to the community. But the fact is,
2 Judge, that even in the case that had danger to the community,
3 as one of the concerns, the *Sabhnani* court, the Second Circuit
4 in *Sabhnani* quotes extensively from the Bail Reform Act on the
5 obligation and the dual burden of proof that the government has
6 in order to secure detention.

7 And your Honor has said at the beginning, you said it
8 at the arraignment, and I know you believe it and I know you
9 mean it when you say it, he's presumed to be innocent. He has
10 the presumption of innocence. When your Honor charges a jury,
11 you can tell them and you would tell them that the presumption
12 of innocence alone if not rebutted by proof beyond a reasonable
13 doubt is enough for you to find the defendant not guilty.

14 So at this stage there is no evidence that you have to
15 suggest that he's going to flee, you have ample assurances that
16 the defendant will stay, and you have enormous incentive for
17 this young man who has a young daughter, and a very successful
18 independent wife, he has every incentive to clear his name. He
19 has every incentive to fight this case.

20 When you look at the charges in this case, and I'll
21 stop then, the bank fraud I submit is defective as a matter of
22 law and will be shown to be dismissed on motion practice. The
23 money laundering statute is a double count. You cannot do a
24 sanctions violation as a practical matter without also
25 violating the money laundering statute the way they charge it

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1 here. And no Court could sentence him separately on both and
2 have those sentences run consecutively, in my judgment, because
3 it is the same activity that is charged as a sanctions
4 violation and as a money laundering violation.

5 And to the extent that they charge, this is at its
6 heart a sanctions case. This is at its heart an unprecedented
7 sanctions case because the government, you have been gracious
8 in permitting us to write and then write again and write again.
9 And I appreciate that and I know the government does too.

10 But you would expect that if they had all of those
11 weeks to write, that they would find one case directly on point
12 where the facts in this case with a defendant who is a
13 non-citizen is charged criminally, criminally, with a violation
14 of the sanctions cases, and what Mr. Szubin said in his
15 testimony as recently as last week is that even if you found
16 someone who did that, maybe they would get blacklisted, maybe
17 they get civil sanctions. There is no suggestion that the
18 defendant is going to face decades in prison that they suggest.

19 So when we get into the weeds, there is going to be a
20 serious due process notice argument that I think the Court will
21 also have to struggle with.

22 But right now, Judge, we just want bail, we want it on
23 the conditions that we submit will reasonably assure the
24 defendant will appear when requested. And I think just like
25 Judge Broderick, just like Judge Rakoff, just like other judges

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1 in other districts have trusted Guidepost, they are the people
2 who do this. The only people who I think you can trust who
3 have impeccable credentials, and they all come out of the
4 Southern District. To suggest they would compromise their
5 reputation because the defendant is paying the fees is just not
6 an appropriate comment and not a fair consideration.

7 Thank you for your patience, your Honor.

8 THE COURT: Thank you.

9 MR. BRAFMAN: Your Honor, just so the record is clear,
10 we have all the passports in the event the Court was to grant
11 bail, there are three passports. One pretrial already has, it
12 was seized at his arrest. We have his other two passports in
13 court, and can deposit them with pretrial or deposit them today
14 with the court if the Court requests.

15 THE COURT: Thank you.

16 MR. LOCKARD: Should I use the podium your Honor?

17 THE COURT: I think it would be easiest, yes.

18 MR. LOCKARD: So, your Honor, I'm going to go in a
19 little bit of reverse order from what Mr. Brafman proceeded in.
20 My comments on Guidepost are going to be very brief, because,
21 your Honor, the government contends that under the
22 circumstances of this case, we don't have to get to the
23 Guidepost question because in light of the nature and the
24 seriousness of the charges that the defendant is charged with,
25 the weight of the evidence against him, and in particular, the

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1 history and characteristics of this defendant, and history of
2 duplicity that he has shown both pretrial services and in court
3 in connection with bail proceedings, preclude any combination
4 of conditions that will reasonably assure his presence.

5 So I'm going to start with the nature and
6 circumstances of the offense charged, and the weight of the
7 evidence and come back.

8 THE COURT: You are going to do them separately,
9 right?

10 MR. LOCKARD: We will do them separately. They're
11 obviously interrelated, but we'll do them separately.

12 I'm going to combat Mr. Brafman's closing argument
13 hopefully right here. What the defendant is charged with, he
14 is not charged with conducting lawful transactions abroad that
15 by happenstance crossed through the United States financial
16 system. Those are not the charges against the defendant.

17 What the defendant is charged with is orchestrating
18 and conducting a scheme to allow sanctioned entities, and the
19 government of Iran, to access the international financial
20 networks, and especially the United States financial networks,
21 in order specifically for the purpose of evading sanctions.

22 The fact that these transactions crossed through the
23 United States is not happenstance. It is a central integral
24 part of the scheme with which the defendant is charged.

25 And there is nothing novel or unique or unprecedented

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1 about an individual, including a foreign national, being
2 charged with knowingly and willfully participating in a scheme
3 to cause violations of the sanctions, and to evade and avoid
4 those sanctions.

5 And nothing about Mr. Szubin's comments to Congress,
6 which I submit have been slightly mischaracterized before the
7 Court, and we have cited the Court to the website of the
8 Treasury Department, where Mr. Szubin's remarks have been
9 memorialized so the Court can see exactly what he said,
10 Mr. Szubin never suggested that United States criminal law and
11 sanctions law does not reach past our own borders. In fact,
12 Mr. Szubin's testimony was drawing a distinction between
13 transactions that do not cross through the United States, and
14 transactions that do cross into the United States. And what
15 Mr. Szubin was explaining is if a foreign national has U.S.
16 dollars and wants to conduct a transaction using those U.S.
17 dollars in a manner that does not cross through the U.S.
18 financial system, then no, the sanctions do not preclude that
19 transaction.

20 The key distinction is when those dollars do cross
21 through the U.S. banking system. And that is what the
22 defendant has been charged with here. That is precisely the
23 conduct that is at issue.

24 We've also cited in our papers provisions of the
25 Office of Foreign Assets Controls website, that make explicit

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1 that the sanctions do preclude foreign nationals from
2 conspiring to evade the national security controls by causing
3 U.S. financial institutions to process these transactions. And
4 we have drawn the Court's and defense counsel's attention to a
5 letter from Mr. Szubin at the time that he was head of OFAC to
6 al Nafis Exchange Company, which is one of the key components
7 of this scheme, a company that was operated in many respects by
8 the defendant, imposing a civil penalty for doing exactly what
9 it is that the indictment also alleges that he did.

10 So there is no novelty here, there is no uniqueness
11 here, there is nothing unprecedented about this.

12 There is also nothing about the JCPOA, the Joint
13 Comprehensive Plan of Action, which removed secondary sanctions
14 against Iran in exchanges for Iran's agreement to limit its
15 nuclear program. A very targeted, specific agreement for a
16 specific purpose. Nothing about that changes the criminality
17 of the conduct here. It was criminal at the time that it took
18 place, it is still criminal under existing United States law as
19 it stands today.

20 Mr. Szubin's comments before Congress go on to explain
21 why it is that Iran is still subject to sanctions because of
22 their support for terrorism, because of various other
23 activities that the government of Iran has undertaken that
24 threaten the national security of the United States. These are
25 national security controls that were adopted because of the

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1 extraordinary threat that the government of Iran poses to the
2 national security of the United States, as has been found by
3 president after president after president, including by
4 President Obama, after the adoption of the JCPOA when that
5 national security threat was continued.

6 The evidence in this case is in fact overwhelming. It
7 is captured in voluminous electronic communications involving
8 the defendant and his co-conspirators.

9 And I will focus, just as Mr. Brafman did, on the
10 draft letter that Mr. Zarrab received from a co-conspirator
11 that was prepared for his signature and addressed to the
12 Central Bank of Iran expressing Mr. Zarrab's willingness,
13 indeed, his patriotic duty, to assist the government of Iran in
14 evading economic sanctions as part of the government of Iran's
15 policy of economic jihad. That is, the intentional evasion of
16 the United States and international sanctions against Iran.

17 THE COURT: Before you get to the weight of the
18 evidence, could you go back to the nature of the charges. And
19 do you have an opinion as to whether or not the charges set
20 forth in your indictment could have taken place without passing
21 through U.S. banking system?

22 MR. LOCKARD: The charges are based on -- the
23 sanctions charges and the bank fraud charges and the money
24 laundering charges are all based on U.S. financial
25 transactions.

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1 Mr. Zarrab is charged with acting with co-conspirators
2 to use a network of front companies located outside of Iran,
3 specifically for the purpose of allowing Iranian entities,
4 including government-own entities, access to international
5 financial systems. As part of that scheme, numerous U.S.
6 dollar transactions were processed by United States banks, by
7 Mr. Zarrab's network, for the benefit of and on behalf of these
8 Iranian entities. And it was designed that way specifically to
9 conceal from the banks the fact that these transactions were
10 for benefit of Iran.

11 And did Mr. Zarrab know they were going to the United
12 States? Of course he did. That is the purpose of the system
13 as it was designed.

14 Mr. Zarrab received numerous e-mails containing
15 financial information reflecting the U.S. dollar transactions
16 were going through U.S. correspondent accounts located in New
17 York City, among other places. Mr. Zarrab was notified when
18 those payments were blocked, because if the scheme did not work
19 the way it was intended and the banks realized the Iranian
20 nexus, the payments were blocked, and we cite to a couple of
21 examples of that happening in the indictment.

22 So I'm going to get back to the Central Bank of Iran
23 letter, which is of course relevant and probative of
24 Mr. Zarrab's knowledge and intent. It was sent to him by
25 co-conspirators, it was copied to Hossein Najafzadeh, who was

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1 the main point of contact between the Mellat Exchange, which is
2 a money services business owned by a state-owned bank in Iran.
3 This was an important business relationship for Mr. Zarrab and
4 his network. Mr. Zarrab and his network did a lot of business
5 for Mellat Exchange to allow it access to international
6 financial markets. And this is a letter about that business.
7 It is a letter about providing the same kind of access to the
8 Central Bank of Iran and the Iranian banking system.

9 Mr. Zarrab received not just one draft of this letter.
10 He received two drafts of this letter. And it is certainly
11 Mr. Zarrab's right to argue at trial that he didn't read it, he
12 didn't understand it, he didn't comprehend it, but the
13 circumstances of the e-mail certainly indicate that he did
14 receive it, and did understand it, and it is in fact reflective
15 of his and his co-conspirators' understanding of the nature and
16 purpose of their conduct.

17 I'm going to address the claim that Mr. Zarrab doesn't
18 read Farsi a little bit more later, but as it pertains to this
19 e-mail, the claim is just not credible. It is just not
20 credible.

21 Mr. Zarrab acknowledges that he can speak and hear
22 Farsi. His family members are Iranian. He has business
23 interests in Iran. He has friends in Iran. And the electronic
24 communications on his telephone and in his e-mail account show
25 that he repeatedly receives communications and documents

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1 written in Farsi, and that he understands and responds to these
2 communications.

3 Now, the language of Farsi does not use the Roman
4 alphabet. It can be written transliterated using Roman
5 characters. It can also be written using Farsi characters.
6 Mr. Zarrab received electronic communications and documents in
7 both forms. And he responds to communications that are written
8 using the Farsi alphabet.

9 And we're happy to provide the Court, if it would like
10 some examples of that happening.

11 But the idea that Mr. Zarrab cannot read the Farsi
12 language is just ludicrous.

13 Similarly, Mr. Zarrab saying he doesn't understand
14 English well enough to participate at a pretrial services
15 interview is also flatly contradicted by the evidence. I know
16 that the Court had reviewed the recording of his post-arrest
17 interview. And what that interview shows is that Mr. Zarrab is
18 comfortable conversing in the English language. And that is
19 shown very strongly, not by the number of times he glances in
20 the direction of the interpreter, but by the occasions in which
21 he tells the interpreter he doesn't need an interpretation. It
22 is shown by the occasions when Mr. Zarrab speaks in English
23 without waiting for a Turkish translation of the agent's
24 statements or questions. It is shown by the lengthy statements
25 in English that Mr. Zarrab makes about his business, and his

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1 travel. It is also shown again in voluminous e-mail and
2 electronic communications in which Mr. Zarbab communicates with
3 others in English. And that is both on his telephone, on his
4 bureau of prisons e-mail account, he receives documents,
5 including business documents, in English. He receives texts
6 and e-mails in English and responds in English.

7 Mr. Zarbab's facility with the English language
8 certainly is strong enough to be able to understand and respond
9 to questions about how much money do you make, what properties
10 do you have, where have you traveled. These are not
11 complicated questions. These are not technical questions, they
12 are not difficult to understand. And in fact he understood
13 them enough to make a slight and extremely misleading
14 disclosure to pretrial services.

15 And while it is true that we were not present at that
16 interview, and neither was Mr. Brafman, the argument that
17 pretrial services got a very limited picture of Mr. Zarbab's
18 travel and assets because they don't know how to ask questions
19 about travel and assets is just not a credible argument. That
20 is the purpose of the pretrial services interview. That is
21 what pretrial services officers do for a living. So this is
22 not the result of the failure of followup questions. This is
23 the result of an intentional effort by the defendant to conceal
24 his foreign assets and his foreign travel. It is an omission
25 that has continued even into the proceedings before this Court

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1 on bail.

2 It has been repeatedly asserted that the defendant has
3 in fact made a full disclosure of his assets, but that is just
4 not the case. There is no inventory of assets that has ever
5 been provided by the defense. There has been a general
6 description that Mr. Zarrab has a shipbuilding company, a real
7 estate company, and a furniture making company. We don't have
8 any inventories of assets, we don't have any identification of
9 bank accounts, we have no idea what Mr. Zarrab's true income
10 is.

11 Mr. Brafman made the argument that the \$50 million
12 bond was a substantial bond that was sufficient under these
13 circumstances. He said, well, if we made it a \$100 million
14 bond, the government would have said, well, he's got \$200
15 million. We have no idea whether the defendant has \$200
16 million or \$2 billion.

17 What we do know is that the only serious effort to
18 detail the defendant's assets has come from the government when
19 we talked about things that were learned through the
20 investigation. Not volunteered by the defendant.

21 And we provided the Court with spreadsheet after
22 spreadsheet after spreadsheet of undisclosed assets of the
23 defendant. Three dozen vehicles, horses, yachts, an airplane,
24 undisclosed real estate holdings, an armory of firearms, a host
25 of private bodyguards. This is all information provided by the

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1 government as a result of investigation, not volunteered by the
2 defendant as part of an effort to demonstrate his financial
3 resources and credibility.

4 So just like the defendant in *Cilins*, who over a
5 series of proceedings disclosed a little more, disclosed a
6 little more, but never disclosed the whole thing, Mr. Zarrab
7 disclosed a little bit to pretrial, disclosed a little bit more
8 to this Court, but has never really disclosed his actual
9 financial profile.

10 Mr. Zarrab's deception to pretrial services also
11 applies to his travel where he did not talk about his Iranian
12 passport or his Macedonian passport. And where he describe his
13 travel as London, Europe, China, Singapore, Thailand, Dubai for
14 vacation. He didn't answer it that way because he didn't
15 understand the question was about all of your travel, not just
16 your vacation travel. He answered that way to try and minimize
17 the appearance of his international travel and ability to
18 travel outside the United States.

19 He does in fact have two more passports which
20 Mr. Brafman candidly disclosed, because he knew about them.
21 But Mr. Zarrab's travel includes not only the places he
22 identified to pretrial, but also Lebanon, with which the
23 government does not have an extradition treaty; Russia, another
24 place from where the defendant cannot be extradited;
25 Azerbaijan; Egypt; Saudi Arabia; South Africa; the Maldives.

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1 None of the these places were disclosed by the defendant. His
2 characterization of his travel as for vacation is an
3 intentional effort to minimize the frequency of his travel.
4 Because his passport, just his Turkish passport, which is the
5 only passport the government has, shows that he engages in
6 international travel on a weekly basis. His passports are
7 novels. So Mr. Zarrab was duplicitous --

8 THE INTERPRETER: Could you repeat that?

9 MR. LOCKARD: His passports are as thick as novels.

10 THE INTERPRETER: Which ones?

11 MR. LOCKARD: The Turkish passport.

12 THE COURT: Wait.

13 MR. LOCKARD: We don't know what travel is reflected
14 in the other two passports.

15 So Mr. Zarrab has been duplicitous with pretrial about
16 his travel, he's been duplicitous with pretrial services and
17 with this Court about his finances, he's strategically
18 attempted to invoke a language barrier when it suits him. He
19 is perfectly conversant in English when speaking with the FBI,
20 but suddenly needs a Turkish interpreter when the shortcomings
21 of his pretrial services interview are revealed. He can read
22 and speak Farsi when it suits him, but suddenly cannot read
23 Farsi characters when it comes to an incredibly incriminating
24 piece of evidence against him.

25 All these factors show that there is no combination of

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1 conditions that can reasonably assure this defendant's
2 continued appearance, especially when combined with the fact he
3 has no ties to the United States whatsoever, he has extensive
4 ties abroad, extensive travel abroad, access to an unknown set
5 of resources. But what we do know shows that he is lavishly
6 wealthy. And not only the ability to travel to places from
7 where he could not be extradited, but a history of traveling to
8 those places repeatedly.

9 So for all of those reasons, that's why the government
10 says you don't have to get to the Guidepost question. But we
11 will get to the Guidepost question.

12 There is some fundamental flaws with the defendant's
13 proposal to be released on bail under the security of armed
14 private guards that have nothing to do with anyone's assessment
15 of the integrity of the Guidepost company or its employees or
16 directors. There are inherent features of that arrangement
17 that have been discussed by other courts, including by Judge
18 Bianco in the Eastern District of New York, and a number of
19 cases that he compiled in his *Valerio* decision that make that
20 condition not a reasonable one.

21 There is, first of all, in the case law a debate, a
22 debate the government thinks is a healthy one, about whether
23 conditions that put the defendant in confinement in a private
24 apartment under armed security, whether this is any longer a
25 question about conditions of release, or whether it is now

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1 about conditions of detention. A question that is not
2 addressed by the Bail Reform Act. And some very thoughtful
3 judges in this district and others have expressed concern that
4 the Bail Reform Act is in those circumstances being abused by
5 wealthy defendants to create conditions of confinement that are
6 more comfortable and convenient to them, rather than conditions
7 of release that are designed to reasonably assure their
8 presence.

9 THE COURT: And your view is what in this case?

10 MR. LOCKARD: In this case, our view is they don't
11 reasonably assure the presence of the defendant.

12 THE COURT: No, where do you come down on the
13 conditions of confinement versus conditions of release?

14 MR. LOCKARD: Our position is that you don't have to
15 get to the question of whether it is legally governed by the
16 Bail Reform Act or not.

17 THE COURT: I see.

18 MR. LOCKARD: Because it does not address the risk of
19 flight issue. But it is a healthy question to ask in
20 circumstances like this.

21 The principal shortcoming of this proposal is that, at
22 heart, the defendant's bail proposal hinges on this proposal to
23 use armed private security guards to assure his presence. That
24 is the lynchpin of the proposal. And what that proposal is
25 really saying is, we're going to take a defendant who poses an

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1 extraordinary flight risk, as reflected not only in all the
2 discussion that we've just gone through, but also in the fact
3 that this is the condition that the defense thinks could
4 reasonably assure his presence. We are going to take somebody
5 with that kind of flight risk and put them in lightly
6 controlled circumstances in Manhattan, and surround them with
7 armed guards. Putting them in the circumstance where a flight
8 attempt is most likely. And then add firearms to the mix,
9 posing a risk to the health and safety of bystanders, and
10 property of innocent neighbors.

11 Then we cited to the Court to -- I believe it was a
12 Newsweek article that talks about prison escape attempts. And
13 the thing about prison escape attempts is they most often
14 happen when the defendant or inmate is not in the prison. An
15 escape is most likely to be attempted and most likely to
16 succeed when an inmate is taken out of the prison environment,
17 for hospital visits or other reasons. That is the position the
18 defendant is being asked to be put in 24/7. It is such a risk
19 that the U.S. marshals service and bureau of prisons, when it
20 is necessary to take an inmate out of the prison, they view
21 that as a high risk, high threat situation. They take
22 precautions to try to avoid an escape event. One of those
23 precautions is not to let anyone else know that the inmate is
24 going to be out of prison. That is information that they keep
25 carefully guarded as a security threat.

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1 Another fundamental problem with the defendant's
2 private armed guard proposal is that it does put the private
3 armed guards in a situation that is unlike the situation faced
4 by federal officers, federal correctional officers, and federal
5 marshals. These are private individuals, notwithstanding their
6 law enforcement background, they are still private individuals.
7 Their conduct is not governed or supervised by federal law or
8 federal agencies. They are neither supervised nor disciplined
9 by federal agencies. The scope of their ability to use force
10 is different, the potential consequences to them of using
11 force, frankly, I don't know.

12 And they're put in a position where they suffer an
13 inherent conflict of interest because they are jailers being
14 paid by the inmate. And it is not impugning their integrity to
15 note that that is a conflict of interest. There are reasons
16 why judges and lawyers have professional rules of conduct.
17 Rules that include prohibitions against conflicts of interest,
18 because they create an inherent impairment on an individual's
19 ability to fulfill their duties. And that's why they're
20 generally prohibited. Even if the lawyer or the judge has all
21 the integrity in the world, it still impairs their ability to
22 do their function. Or at the very least it creates the
23 appearance of that impairment.

24 The same concept applies to the Guidepost proposal.
25 It creates a conflict of interest for a private security guard

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1 who is being paid by the person they're guarding, and if an
2 escape attempt happens, they are now under conflicting impulses
3 about whether to use force, how to use force, under what
4 circumstances, what are going to be the consequences to me if I
5 do this. These are conflicts that are not faced by bureau of
6 prisons officials or United States marshals.

7 Your Honor, I think I'm done, if I could just have a
8 moment to consult with co-counsel.

9 THE COURT: Sure.

10 MR. LOCKARD: So your Honor, for those reasons as well
11 as those set forth in our papers, the government submits there
12 are no conditions or combination of conditions that will
13 reasonably assure the presence of this defendant.

14 And as I said, if the Court would like to see some
15 examples of electronic communications that I referenced showing
16 the defendant's facility with the English language and
17 understanding of Farsi characters, we are happy to provide
18 those to the Court and point them out to defense counsel.

19 THE COURT: I would like to see those. If you could
20 submit them send them in a letter with a cover letter with a
21 copy to Mr. Brafman. I would like to see what you have.

22 I am going to take 10 minutes, Mr. Brafman, and then
23 give you another couple of minutes.

24 MR. BRAFMAN: I just need a couple minutes.

25 THE COURT: Yes.

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1 (Recess)

2 THE COURT: Please be seated.

3 Mr. Brafman.

4 MR. BRAFMAN: Your Honor, I promise to be brief and I
5 appreciate the opportunity to briefly respond.

6 I want to first indicate for the record that when
7 Mr. Lockard cited the case before Judge Bianco, that is the
8 *Valerio* decision which we reference in our brief at page nine,
9 footnote eight, *Valerio* is a child pornography case where it
10 was a production case that carried a mandatory 15-year minimum
11 sentence. And while Judge Bianco did reject the armed
12 security, he did so for the following reasons. Quote: "The
13 defendant's attempt to replicate a jail in his home is
14 insufficient to adequately address the issues of dangerousness
15 raised by his release."

16 This was not a risk of flight. This was someone who
17 was producing child pornography, and was facing mandatory
18 minimum 10, 15-year sentence, and the decision by Judge Bianco
19 is completely unrelated to the issues before this Court.
20 Because he was concerned that the defendant could continue to
21 engage in production if he were released.

22 Also, your Honor, the government cites this inherent
23 conflict.

24 THE COURT: Before you get to that, I want to make a
25 comment about that case or the *Cilin* case or the *Madoff* case.

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1 So, in my opinion, each case is unique in the sense that we
2 have to decide bail or remand based on this case, this case
3 involving Mr. Zarrab. And we can draw something or not,
4 distinguish or not, other cases, but at the end of the day, my
5 decision is going to be made based on the factors that are set
6 forth as they applied in this case. And of course we'll look
7 at other cases in the circuit and elsewhere to perhaps get
8 ideas. But, I do want to underscore that I think every case
9 has to be decided on its individual merits and its individual
10 facts.

11 MR. BRAFMAN: I agree. And I don't think it should be
12 any other way, and I appreciate what your Honor has said. And
13 what we have done in citing other cases is not to say to your
14 Honor because that judge did it, you need to do it. But just
15 to address the government's suggestion that this is a novel
16 approach, we want the Court to be comfortable in the knowledge
17 that other judges in this district and elsewhere has found in
18 those cases, under circumstances there, that it was
19 appropriate, and that it is not something that should be
20 ignored as a proposition when the issue and the standard is can
21 we provide the Court with reasonable conditions that will
22 reasonably assure the defendant's appearance, which is the
23 standard that the Court needs to make in a case where
24 dangerousness to the community is not in issue. But I hear
25 what your Honor is saying.

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1 Your Honor, I would also indicate that the suggestion
2 that the defendant was trying to hide his Iranian passport is
3 absurd, because he is indicted under his Persian name. Reza
4 Zarbab with a Z is his Persian name. His Turkish name is
5 Sarraf. The passport he came to the country under is his
6 Turkish name. For him to be indicted under Zarbab, to be told
7 he is under arrest for violating the laws of this state under
8 his Persian name, it would be ludicrous for him to deny he has
9 an Iranian passport. He was asked if he had a passport, and
10 the passport he entered the country in was his Turkish
11 passport. There was no attempt to mislead pretrial.

12 And I again submit most respectfully that I disagree
13 vigorously with the government's assessment of the videotape,
14 which is the best example of what he does understand and what
15 he doesn't understand. And just like I can confer with him
16 about uncomplicated questions, when you're talking about key
17 words, you have to accept that he needs an interpreter.

18 And I also point out, which the government may or may
19 not know, but when you deal with people in prison for as long
20 as I have, and their e-mails from prison you understand, is the
21 e-mails that someone writes from prison, first of all, you can
22 have help from other inmates in how you compose your e-mail.
23 Second, there is a self-correcting feature on the CorrLinks
24 e-mail. If you hit a button it fixes any of your grammatical
25 errors, any of your spelling errors. So to suggest to me

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1 because he writes an e-mail to someone from jail that
2 demonstrates his proficiency in English is just wrong.

3 Third, in the discovery that we've already reviewed,
4 this is just the tip of the iceberg, there are references by
5 Mr. Zarbab well before he is arrested, in 2015, to people who
6 are trying to write to him in Farsi, that I don't read Farsi.
7 It is a text message that the government gave us, so there is a
8 clear indication before he has any reason to fabricate that he
9 can't read Farsi.

10 And the other thing that the government needs to
11 understand is that you will find that there are Farsi e-mails
12 that were sent to him that he forwarded to others. Others
13 forwarded to him. And the problem with an e-mail, as I tell
14 law students, is once you hit the send button, you have no idea
15 where that e-mail ends up, and you have no control over what
16 e-mail comes to you.

17 The defendant does not speak -- he speaks Farsi, but
18 he does not read and write Farsi. If the government has
19 examples, we'll respond when and if we see them. I suggest
20 they not waste your Honor's time.

21 I also want to end on this note. They suggest that
22 there is no conflict -- that there is a conflict between
23 employing a private guard, and you know, Judge, no system is
24 perfect. And people do escape from the bureau of prisons. And
25 people every day, we read in the tabloids, unfortunately, about

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1 bureau of prisons people who are compromised by cunning
2 inmates, whether they get contraband in or whether they got
3 contraband out and people are being disciplined and fired. No
4 system is perfect.

5 But what we have in this system with Guidepost is,
6 first of all, live feed from the facility in which he is going
7 to be housed. Cameras being monitored by their professionals,
8 they have had hundreds of assignments from federal courts, from
9 state courts, and there hasn't been a single issue of a
10 Guidepost representative being compromised.

11 Is anything possible? Yes, anything is possible.
12 Could he try to escape and have to be shot? Sure. That's
13 something that we addressed in the *Ng* case, and the defendant
14 signed a waiver which allowed the Guidepost people to use
15 reasonable force as if they were a police officer.

16 And to the extent that there is danger to the
17 community, Judge, we are all grownups here. Every time a
18 police officer, a sworn police officer, a trained police
19 officer, uses a weapon on the streets of New York, the odds are
20 overwhelming that someone other than the person they're
21 shooting at gets hit either a ricochet or by a stray bullet.

22 So to suggest he should be remanded because of the
23 unlikely event that he'll overpower two or more armed guards to
24 escape and they will have to shoot him and they'll end up
25 shooting someone else is just not right.

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1 What the law says is he is entitled to bail. There is
2 nothing about these charges that suggest that he is not
3 entitled to bail. And unless and until they overcome the dual
4 burden of proof, which I don't think they can, he is entitled
5 to bail. And when they say to us or to you, just a moment ago,
6 well, look at the conditions they proposed to you from the
7 start, which suggests implicitly they're saying that we
8 proposed Guideposts because he couldn't be trusted. We
9 proposed Guideposts so that we don't waste your Honor's time
10 coming back again and again and again and again because of his
11 lack of ties to the community.

12 The only reason we're not talking about easy bail
13 under these charges is because the defendant doesn't have ties
14 to the community. If he had ties to the community, on these
15 charges, I submit he would be on very reasonable bail, he would
16 have been out for the last 70 days, and we would not be having
17 a detention hearing because he has no criminal record, it is a
18 white collar crime and it is not a crime of violence. If he
19 was a citizen of the United States, or from the United States,
20 they created this venture by arresting him when he came to
21 Disneyland on the jurisdictional charge that I submit is
22 hanging by a thread.

23 The only reason we came to you, with my experience in
24 this building, with my knowledge of the bail practices in this
25 building, it was I who suggested that the best chance you have

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1 of convincing the Court that we have provided reasonable
2 assurance that he will stay here, is if we propose Guideposts,
3 who is all former people who the government I think gives great
4 credibility to or at least they usually do, and propose that to
5 the Court. So we don't have to come back and continue to
6 provide additional conditions. It was out of respect for this
7 Court's time that we offered it in the first instance. Not
8 because we concluded that it was the only way that could keep
9 him here.

10 Thank you very much for your patience.

11 THE COURT: I do have one question, one followup
12 question just on that on the Guidepost situation. And now if
13 you have it handy, if you'd look at Mr. Jaffe's affirmation.

14 MR. BRAFMAN: Yes, sir.

15 THE COURT: It comes up in a few places, but on page
16 three, paragraph six, it says, Mr. Jaffe speaking, "In pretrial
17 release cases, as in all of our monitoring assignments, we
18 follow the directions and orders of the judge, ordering
19 pretrial release to secure and oversee the individual releasee
20 according to the judge's orders," etc., etc.

21 So, I don't quite understand what that means. So,
22 certainly, I'm not going to be on the phone to the Guidepost to
23 say, well, that sounds like a dangerous situation, you should
24 act or not act. Or you should.

25 What's that about?

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1 MR. BRAFMAN: I'll explain that and it's a good
2 question and there is a very good answer. The way it would
3 work, we hope if the Court were to order release with the
4 Guidepost, is your Honor would say these are the following
5 conditions of bail. He can only leave with pretrial approval
6 and notice to the government. He can only go to the following
7 places. Meaning the law firm or medical facility. And then
8 they don't allow any other release outside those conditions.

9 And the way it works is we notify or they notify
10 pretrial, pretrial understands that this is within the Court's
11 order, and they approve it, and then the person is blacked out
12 of the electronic monitoring while they are in the custody of
13 Guidepost while they travel from one place to the next.

14 This is not a situation where Guidepost bothers the
15 Court with we think we should hit him over the head with a
16 hammer because he is being obnoxious. This will not bother the
17 Court at all. To the contrary. Once the Court sets the
18 conditions of release and the conditions provide, for example,
19 he would remain in the apartment, money gets deposited with the
20 court, the bond is signed, the defendant is outfitted with the
21 bracelet, he is only permitted to leave with pretrial
22 supervision and notice -- pretrial approval, on notice to the
23 government, then the Court isn't bothered. They are not
24 calling you for guidance on what they have to do, and what they
25 don't have to do.

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1 This is working seamlessly in other cases right as we
2 speak where pretrial supervision gets a request from a law firm
3 saying we need the defendant in our office between 10 and
4 p.m., and they black him out, Guidepost brings him to the
5 office, they sit there until he is released, and then they take
6 him back. And always people remain in the apartment so people
7 can't get in there who aren't supposed to be in there.

8 I can give your Honor the order that Judge Broderick
9 wrote.

10 THE COURT: I just wanted to get your take on it.

11 MR. BRAFMAN: Yes, it doesn't require your Honor to
12 weigh in on everyday ministerial functions as to whether we can
13 do this, whether we can do that.

14 THE COURT: I do think that actually there's some
15 suggestion there that whether or not they have a gun or not is
16 a function of whether the Court determines they should or
17 shouldn't.

18 MR. BRAFMAN: Yes, but Judge, once you set that in
19 place, they only used arm guards. And if you say it doesn't
20 matter, that's up to their discretion.

21 THE COURT: That goes to my question. I don't know
22 what that means. If I say have a gun, that is suggesting that
23 you use the gun.

24 MR. BRAFMAN: No. Judge, these are trained --
25 everyone is a trained law enforcement person.

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1 THE COURT: Just hear me out. There's obviously a
2 distinction between an armed guard and an unarmed guard. So if
3 the judge -- I'll say it again, I think it is valid -- if the
4 judge says, well, they should be armed, then there is some
5 suggestion at least that if something happens, you use that
6 gun.

7 MR. BRAFMAN: Well, Judge, we'll take that
8 responsibility off your shoulders. We will consent to the
9 armed guards, for the guards being armed at all times. That's
10 easy. It makes it much easier. And quite frankly, your Honor,
11 I think that Guidepost prefers it. It is a higher rate if the
12 person is armed than if they are not armed.

13 I understand your Honor's concern. I don't want the
14 issue of whether the officer chooses to use a weapon to be
15 brought back to your direction that it has to be armed. We
16 will consent to the has to be armed. The defendant will sign a
17 waiver as he did in the Ng case that agree they are permitted
18 to use reasonable force to detain him if he attempts to flee.
19 And obviously, law enforcement people are justified even in
20 using deadly physical force if the circumstances arise. That's
21 all on us.

22 THE COURT: I'm raising the issue because I have
23 studied these other cases that you all have been referring to,
24 including -- it's interesting to read the transcripts of those
25 proceedings, where there is a sort of a -- not a negotiation,

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1 that's too strong a term, but a back and forth with the judge
2 and the prosecutor and the defense lawyer. And so, yes, he'll
3 be armed. No, they won't be armed. Or I imagine you are aware
4 I think even in Judge Rakoff in the *Dreier* case, I don't even
5 think Mr. Dreier was able to go to his lawyer's office, I think
6 the lawyer Mr. Shargel had to come to his apartment.

7 MR. BRAFMAN: That's correct.

8 THE COURT: There are all these permutations involved
9 with the Guidepost type situation that are -- well --

10 MR. BRAFMAN: Your Honor, to the extent your Honor is
11 considering granting bail, I want to make it as user friendly
12 and as easy for the Court. We will agree to whatever
13 conditions you deem appropriate, and if it requires us to come
14 to his apartment, we have secured an apartment that is big
15 enough to have a meeting room so the lawyers can work so that's
16 easy. To be perfectly candid with you, it makes our life
17 easier, it makes Guidepost easier, and it saves the defendant
18 an enormous expense. Every time they transport him, they use a
19 special vehicle with a special guard. If that's part of the
20 mix, Judge, we won't fight you on any of those conditions.

21 THE COURT: I'm not negotiating. I'm just trying to
22 understand how these arrangements come about.

23 MR. BRAFMAN: Well, in the *Dreier* case, as I
24 understand it, I was in touch with Mr. Shargel back then, there
25 was a very limited window because they were negotiating a plea.

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1 So there wasn't really any need for Mr. Dreier to go anywhere,
2 other than stay home, because he wanted to be able to take care
3 of personal matters. And shortly after the armed -- the guards
4 started, he pled guilty and was remanded.

5 So, here, your Honor, this case might be tried in
6 several months, might be tried in a year, depending on the
7 motions and depending on the extent of the discovery. So, each
8 case as you said is fact specific, and we'll work with whatever
9 conditions your Honor were to impose.

10 THE COURT: I got you. Thank you.

11 MR. BRAFMAN: Thank you, sir.

12 MR. LOCKARD: Your Honor, I am not seeking a
13 sur-reply. Just wanted to make one very quick --

14 THE COURT: Well, there is precedent here for a
15 sur-reply as I can tell everybody, and then some actually. I
16 think -- what comes after a sur-reply?

17 MR. BRAFMAN: Sur-sur-reply.

18 THE COURT: We've gotten those too. Go ahead.

19 MR. LOCKARD: Just a very quick correction to the
20 record. I think Mr. Brafman said that the Valerio case was
21 only a danger to the community case and not a risk of flight
22 case. I wanted --

23 THE INTERPRETER: The interpreter cannot hear.

24 THE COURT: It is best if you use the podium.

25 MR. BRAFMAN: I agree with them. There were two --

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THE COURT: Wait.

MR. LOCKARD: Just to make a quick correction for Mr. Brafman's benefit. On pages 297 to 298 of the Valerio decision, Judge Bianco also addresses risk of flight and concludes for some of the same reasons that the private guards did not adequately address danger to the community, it also did not adequately address risk of flight issue.

MR. BRAFMAN: It was a 15-year mandatory minimum.

THE COURT: Okay. Can we have a timeframe, you are going to make a submission to me. Can you do that say today, tomorrow? Or tomorrow let's say.

MR. LOCKARD: Yes.

THE COURT: Mr. Brafman, we'll give you an opportunity to respond. If he submits it Friday, you can respond by Tuesday?

MR. BRAFMAN: Okay. Yes, sir.

THE COURT: Great. So very helpful. I am going to take the matter, as I said at the outset, under advisement and I'll be in touch, as they say.

Thanks very much. We are adjourned.

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